

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
March 3, 2008

**D051895      Vision Manufacturing, Inc. v. Miller et al.**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D052145      Cain v. Superior Court of San Diego County/Phillips et al.**

The petition is denied.

**D052543      Perry v. Superior Court of San Diego County/County of San Diego et al.**

It appears to the Court that Kevin Perry has been declared a vexatious litigant within the meaning of Code of Civil Procedure section 391 and must obtain a pre-filing order under Code of Civil Procedure section 391.7. (A copy of the April 20, 2006 order requiring the pre-filing application is attached.) On the court's own motion, the writ proceeding is stayed. The enclosed Application for Permission to Appeal or to file a Writ Petition must be completed and returned to this court within 10 days of the date of this order. The writ petition shall be dismissed unless Perry obtains an order from the Presiding Justice of this Court permitting the filing of the petition under Code of Civil Procedure section 391.7, subdivision (b).

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**D051934      A.O. Reed & Company v. Workers' Compensation Appeals Board and Gallegos**

The petition for writ of review, answers, and reply have been read and considered by Justices Benke, McIntyre and Aaron.

Respondent Armando Gallegos (Gallegos) injured his right upper extremity while working as a pipe fitter/welder. At the time Gallegos first noticed his injury, he was working for Emcor/University Mechanical (Emcor). He filed a claim for benefits through an alternative dispute resolution system authorized by Labor Code section 3201.5 and agreed upon by his union and a group of employers, including Emcor.

Gallegos initially submitted a claim for a specific injury and later added a claim for a cumulative trauma injury. After Gallegos added the cumulative trauma claim, he and Emcor both notified petitioner A.O. Reed & Company (A.O. Reed) of the claim. Because A.O. Reed had employed Gallegos for approximately six months during the preceding one-year cumulative trauma period, it was potentially liable for providing some or all of Gallegos's workers' compensation benefits. When A.O. Reed received notice of Gallegos's claim, two depositions and an arbitration hearing had already been scheduled. A.O. Reed's counsel attended one of the depositions and questioned the witness on matters pertinent to A.O. Reed's anticipated defenses. A.O. Reed's counsel and a representative from A.O. Reed also attended the arbitration hearing. At the beginning of the hearing, Emcor's counsel successfully moved to join A.O. Reed and another employer as parties to the proceeding. A.O. Reed's counsel did not object or otherwise comment on Emcor's motion. In addition, after the arbitrator granted the motion, A.O. Reed's counsel fully participated in the hearing, including questioning witnesses and submitting post-hearing briefing.

Based on the hearing testimony, the documentary evidence, and the parties' briefing, the arbitrator found that Gallegos had sustained a cumulative trauma injury and awarded him various benefits. The award was made against Emcor and A.O. Reed, jointly and severally. However, the arbitrator designated A.O. Reed as the primarily liable party, presumably because A.O. Reed had employed Gallegos longer than any other employer during the cumulative trauma period.

A.O. Reed petitioned the Workers Compensation Appeals Board (WCAB) for reconsideration of the arbitrator's decision. In its petition, A.O. Reed challenged the propriety of certain of the arbitrator's findings, but A.O. Reed did not challenge the arbitrator's jurisdiction over it. To the contrary, A.O. Reed's petition assumed such jurisdiction existed by, among other things, including a copy of the arbitration agreement as an exhibit.

The WCAB denied A.O. Reed's petition, after which A.O. Reed changed counsel. New counsel then petitioned the WCAB for reconsideration, arguing for the first time that the arbitrator had no jurisdiction over A.O. Reed because A.O. Reed was not a signatory to the arbitration agreement. Until this point in time, neither A.O. Reed nor its counsel had ever expressed any questions or concerns about the arbitrator's jurisdiction.

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Following a series of procedural steps not relevant here, the WCAB granted reconsideration and subsequently affirmed the arbitration award. The WCAB concluded that A.O. Reed, by its actions, had essentially consented to arbitration, which it is permitted to do under Labor Code section 5275, subdivision (b). The WCAB also concluded that A.O. Reed had waived any challenge to the arbitrator's jurisdiction by failing to timely object.

A.O. Reed then filed this petition seeking review of the WCAB's decision.

This court's review of WCAB decisions is limited to determining whether: (1) the WCAB acted without or in excess of its powers, (2) the order, decision or award was procured by fraud, (3) the order, decision or award was unreasonable, (4) the order, decision or award is supported by substantial evidence, or (5) if findings of fact are made, the findings support the order, decision, or award. (Lab. Code, § 5952.) The court may not hold a trial de novo, take evidence, or exercise its independent judgment on the evidence. (*Ibid.*)

We conclude A.O. Reed has not established that review is warranted in this case because A.O. Reed has not established that the WCAB's decision is unreasonable or factually unsupported. By virtue of Labor Code section 3201.5 and the arbitration agreement, the arbitrator had subject matter jurisdiction over Gallegos's claim. (See *Becerra v. Eastside Reservoir Project/Advanco Constructors* (1997) 62 Cal. Comp. Cases 937.) Although the arbitrator may not have had personal jurisdiction over A.O. Reed initially, personal jurisdiction can be obtained by waiver or consent. (See, e.g., *Northington v. Industrial Acc. Com.* (1937) 23 Cal.App.2d 255, 259-260.) There is ample evidence in the record, as described above, that such consent and/or waiver occurred in this case.

The petition is denied. As requested by Gallegos, this matter is remanded to the WCAB for a supplemental award of attorney fees. (Lab. Code, § 5801.)

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**D049040      People v. Hamlin**

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Irion, J.

**D051665      In re R.E., Juveniles**

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., Aaron, J.

**D050765      People v. Lewis**

The abstract of judgment is ordered modified to delete any reference to the second section 667.5, subdivision(b), finding. In all other respects the judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Haller, J.

**D050756      People v. Lynch**

The case is remanded. The trial court is instructed to conduct a new sentencing hearing at which time it shall impose sentences in case Nos. SCE250375 and SCE238783, and further, properly obtain appellant's admission of the two prior prison terms in case No. SCE250375. Benke, J.; We Concur: McConnell, P.J., McDonald, J.

**D051300      In re Alejandro A., a Juvenile**

The judgment is affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

**D052198      Del Mar Pacific General Contractors Inc., et al. v. Superior Court of San Diego County/Del Mar Pacific Acquisition Corp.**

The petition is denied.

**D049938      Integrated Landscape Group, Inc. v. Attisha**

Judgment affirmed. Appellant to pay respondent's costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., Irion, J.

**D051407      People v. White**

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D050428      People v. Stacy**

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Aaron, J.

**D050306      Tebbi et al. v. Rose et al.**

The petition for rehearing is denied.

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March 04, 2008 (Continued)

**D052354      Demetria R. v. Superior Court of San Diego County/San Diego County  
Health and Human Services Agency**

The attorney for petitioner Demetria R. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

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**D050165      Domby v. Moritz**

Judgment affirmed. Respondent to recover his costs. Benke, J.; I Concur: McConnell, P.J.,  
I Concur in the result: Huffman, J.

**D049993      People v. Smith**

The judgment is reversed. Haller, J.; We Concur: McConnell, P.J., Benke, J.

**D051875      In re Courtney P., a Juvenile**

The appeal is dismissed. O'Rourke, J.; We Concur: McConnell, P.J., McDonald, J.

**D050458      People v. Duncan**

The judgment is affirmed. CERTIFIED FOR PUBLICATION  
McIntyre, J.; We Concur: McConnell, P.J., Huffman, J.

**D051217      In re Brandon P., a Juvenile**

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., McIntyre, J.

**D051977      In re Geraldo M., a Juvenile**

The appeal is dismissed. Aaron, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

**D052225      Salazar v. Superior Court of San Diego County/Salazar**

The petition is dismissed as moot.

**D052604      People v. Moore**

The notice of appeal is premature because no appealable order or judgment has been entered.  
The appeal is DISMISSED without prejudice to re-filing a notice of appeal after an appealable  
judgment or order has been entered.

**D052041      In re Johnson on Habeas Corpus**

The petition is denied. The requests for judicial notice are denied.

**D052589      Hebbard-Kulow Enterprises, Inc. v. Superior Court of Imperial  
County/Kelomar, Inc.**

The petition is denied.

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**D050811      In re Trinity R., a Juvenile**

The orders are affirmed. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.

**D052496      In re Donald C., a Juvenile**

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D052498      Jernigan v. The Superior Court of San Diego County/The People**

The petition is denied.

**D052073      In re Britney O. et al., Juveniles**

The appeal is dismissed. McIntyre, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D051673      In re Deandra W., a Juvenile**

The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., McIntyre, J.

**D051035      People v. Smith**

The judgment is affirmed as to the adjudication of guilt and reversed as to the sentence. The matter is remanded for resentencing. Haller, J.; We Concur: McConnell, P.J., Irion, J.

**D048657      People v. Smith**

The judgment of the trial court is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McDonald, J.

**D049369      Del Taco, Inc. v. 1033 Third Street Corp.**

The judgment is affirmed. Costs are awarded to Third Street on appeal. Huffman, Acting P.J.; We Concur: Nares, J., Haller, J.

**D050160      Villa Vista Mobile Estates Transitional Team v. Collins et al.**

Judgment affirmed. Appellant to pay respondents' costs on appeal. Haller, J.; We Concur: McConnell, P.J., Benke, J.

**D050037      In re Carl N., a Juvenile**

Order modifying opinion. No change in judgment.

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**D049959      In re the Marriage of Sanders**

The order denying Claudia's motion to set aside the judgment is reversed. The matter is remanded with directions that the trial court: (1) vacate that order and its subsequent order denying her motion to vacate that order or alternatively, for a new trial; (2) vacate its orders imposing sanctions against Claudia; and (3) enter a new order granting her motion to set aside the judgment to the extent it divided and distributed the parties' separate and community property. Claudia shall recover her costs on appeal. McDonald, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

**D050202      Poway Unified School District v. Stewart**

The appeal is dismissed. The District is entitled to costs on appeal. McConnell, P.J.; We Concur: Benke, J., McIntyre, J.

**D052010      In re Cuero on Habeas Corpus**

The petition is denied.

**D052076      In re Scudder on Habeas Corpus**

The petition is denied.

Court convened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre  
Clerk: D. Moore

**D049802      La Honda Development LLC v. Kreusser**

Cause called on merits. William C. Tayler, Esq. argued for appellant. Jerry D. Cluff, Esq. argued for respondent. Mr. Tayler replied. Mr. Cluff replied. Parties are to provide a written statement to the court whether they will, or will not, go the settlement route. Otherwise, cause to be submitted on March 20, 2008.

Court recessed at 2:15 p.m.

**D052371      Lita H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Lita H. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.



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**D052371      Sandy W. et al. v. Superior Court of San Diego County/San Diego County  
Health and Human Services Agency**

The attorney for petitioner Sandy W. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Sandy W. is dismissed.

**D052556      Gardner v. Superior Court of San Diego County/Ariko**

The petition is denied.

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**D049649      People v. Partee**

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Nares, J.

**D051326      In re Jon H., a Juvenile**

The order is reversed. The case is remanded with directions to transfer the case to Riverside County. The remittitur is to issue forthwith. Huffman, J.; We Concur: McConnell, P.J., Nares, J.

**D052042      In re Johnson on Habeas Corpus**

The petition is denied.

**D052047      In re Carrillo On Habeas Corpus**

The petition is denied without prejudice to being re-filed in the Riverside County Superior Court.

**D051719      People v. Hall**

Upon written request filed by appellant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D050182      Graboski v. Graboski**

The judgment is affirmed. McDonald, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D052370      Trina L. et al. v. Superior Court of San Diego County/San Diego County  
Health and Human Services Agency**

The attorney for petitioner Timothy W. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Timothy W. is DISMISSED.

**D051177      Swath Ocean Systems LLC et al. v. Friedman**

Swath Ocean Systems LLC has filed a request for dismissal of its appeal. The request is granted and the appeal is dismissed as to Swath Ocean Systems LLC only and the remittitur is ordered to issue immediately.

**D051818      In re the Marriage of Stellmacher**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.